

**TITLE 145. OKLAHOMA DEPARTMENT OF EMERGENCY MANAGEMENT
CHAPTER 10. GUBERNATORIAL DECLARATIONS FOR DISASTER ASSISTANCE**

SUBCHAPTER 1. GENERAL

145:10-1-1. Purpose

The purpose of this subchapter is to prescribe the policies and procedures to be followed in implementing 62 O.S. Supp. 1993, § 139.47 as amended by Enrolled Senate Bill No. 1091, signed into law by the Governor on 26 May 1994, delegated to the Oklahoma Department of Emergency Management (OEM).

145:10-1-2. Definitions

Definitions which apply to individual Subchapters in this chapter are found in those Subchapters. In addition, the following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Contractor" means any individual, partnership, corporation, agency, or other entity (other than an organization engaged in the business of insurance) performing work by contract for the eligible Applicant.

"Designated Area" means any emergency or major disaster-affected portion of the State which has been determined eligible for State Disaster Assistance.

"Director" means the Director, OEM, or his/her designee.

"Eligible Applicant" means incorporated cities, towns and counties that apply for assistance as a result of a declaration of major disaster or emergency.

"Emergency" means any occasion or instance for which, in the determination of the Governor, State assistance is needed to supplement local efforts and capabilities to save lives and protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the State of Oklahoma.

"Governor" means the chief executive officer in the State, or the Acting Governor.

"Governor's Authorized Representatives (GAR)" means the person empowered by the Governor to execute, on behalf of the State, all necessary documents for State Disaster Assistance.

"Gubernatorial Declaration" means any major disaster or emergency declaration made by the Governor to alleviate suffering, protect life and property and provide assistance to eligible Applicants.

"Hazard Mitigation" means any cost-effective measure which will reduce the potential for damage to a facility from a disaster event.

"Local Government" means any county, city, village, town, district or other political subdivision of the State; and includes any rural community, unincorporated town or village, or other public entity for which an application for assistance is made by a county or political subdivision thereof.

"Major Disaster" means any natural catastrophe (including any tornado, storm, high water, wind-driven water, earthquake, landslide, mudslide, snow storm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the State of Oklahoma, which in the determination of the Governor causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement State and local resources in alleviating the damage, loss, hardship, or suffering caused thereby.

"Public Assistance" means supplementary State assistance provided to eligible Applicants other than assistance for the direct benefit of individuals and families. For further information, see subchapters 5, 7 and 9 of this chapter.

"State Agency" means any department, independent establishment, Government corporation, or other agency of the executive branch of the State Government.

"State Coordinating Officer (SCO)" means the person appointed by the Director, or in his/her absence, the Deputy Director, to coordinate State assistance in an emergency or major disaster.

145:10-1-3. Policy

It is the policy of OEM to provide an orderly and continuing means of assistance by the State government to eligible Applicants in carrying out their responsibilities to alleviate the suffering and damage that result from major disasters and emergencies by:

- (1) Providing State assistance programs for public losses and needs sustained in disasters;
- (2) Encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the State and local governments;
- (3) Achieving greater coordination and responsiveness of disaster preparedness and relief programs;
- (4) Encouraging individuals and local governments to obtain insurance coverage and thereby reduce their dependence on governmental assistance; and
- (5) Encouraging hazard mitigation measures, such as development of land-use and construction regulations, floodplain management, protection of wetlands, and environmental planning, to reduce losses from disasters.

145:10-1-4. Assistance by other State agencies

- (a) In any declared major disaster, the Director may direct any State agency to utilize its authorities and the resources granted to it under State law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) to support local assistance efforts.
- (b) In any declared emergency, the Director may direct any State agency to utilize its authorities and the resources granted to it under State law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) to support emergency efforts by local governments to:
 - (1) save lives;
 - (2) protect property, public health and safety; and
 - (3) lessen or avert the threat of a catastrophe.
- (c) Disaster assistance by other State agencies is subject to the coordination of the SCO. State agencies shall provide any reports or information about disaster assistance rendered that the SCO considers necessary and requests from the agencies.
- (d) Assistance furnished by any State agency under subsections (a),(b), or (c) of this section is subject to the criteria provided by the Director.
- (e) Assistance under subsections (a), (b), or (c) of this section, when directed by the Director, does not apply to nor shall it affect the authority of any State agency to provide disaster assistance independent of the Act.
- (f) In carrying out the purposes of the Act, any State agency may accept and utilize, with the consent of the local government, the services, personnel, materials, and facilities of any local government, agency, office, or employee. Such utilization shall not make such services, materials, or facilities State in nature nor make the local government or agency an arm or agent of the State Government.

145:10-1-5. Nonliability

The State Government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a State agency or an employee of the State Government in carrying out the provisions of the Act.

145:10-1-6. Use of local firms and individuals

In the expenditures of State funds for debris removal, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement, consistent with State and Federal procurement procedures, with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster or

emergency. This shall not be considered to restrict the use of State resources in the provision of major disaster assistance under the Act.

145:10-1-7. Nondiscrimination in disaster assistance

- (a) State financial assistance to eligible Applicants in this Act is conditioned on full compliance with 44 CFR part 7 Nondiscrimination in Federally-Assisted Programs.
- (b) All personnel carrying out State major disaster or emergency assistance functions, including the distribution of supplies, the processing of the applications, and other relief and assistance activities, shall perform their work in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status.
- (c) As a condition of participation in the distribution of assistance or supplies under the Act, or a receiving assistance under the Act, government bodies and other organizations shall provide a written assurance of their intent to comply with regulations relating to nondiscrimination.
- (d) The State Agency shall make available to employees, applicants, participants, beneficiaries, and other interested parties such information regarding the provisions of this chapter and its applicability to the programs or activities conducted by the State Agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this chapter.

145:10-1-8. Standards and reviews

- (a) The Director shall establish program standards and assess the efficiency and effectiveness of programs administered under the Act by conducting annual reviews of the activities of State agencies and the eligible Applicant(s) involved in a major disaster or emergency response efforts.
- (b) In carrying out this provision, the Director may direct State agencies to submit reports relating to their disaster assistance activities. The Director may request similar reports relating to these activities on the part of the eligible Applicant(s). Additionally, the Director may conduct independent investigations, studies, and evaluations as necessary to complete the reviews.

145:10-1-9. Criminal and civil penalties

- (a) **Misuse of funds.** Any eligible Applicant that knowingly misapplies the proceeds of cash benefit obtained under the Act may be fined an amount equal to one and one-half times the misapplied amount of the proceeds or cash benefit.
- (b) **Civil enforcement.** Whenever it appears that any eligible Applicant has violated or is about to violate any provision of the Act, including any civil penalty imposed

under the Act, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in an appropriate district court.

- (c) **Referral to Attorney General.** The Director shall expeditiously refer to the Attorney General for appropriate action any evidence developed in the performance of functions under the Act that may warrant consideration for criminal prosecution.
- (d) **Civil penalty.** Any eligible Applicant that knowingly violates any order or regulation issued under the Act may be subject to a civil penalty of not more than \$5,000 for each violation.

145:10-1-10. Recovery of assistance

Any eligible Applicant that intentionally causes a condition for which State assistance is provided under the Act or under any other law as a result of a declaration of major disaster or emergency under the Act shall be liable to the State for the reasonable costs incurred by the State in responding to such disaster or emergency to the extent that such costs are attributable to the intentional act or omission of such Applicant which caused such condition. Such action shall be brought in an appropriate District Court.

145:10-1-11. Audit and investigations

- (a) The Director shall conduct fiscal reviews and investigations as necessary to assure compliance with the Act, and in connection therewith may question such persons as may be necessary to carry out such audits and investigations.
- (b) For purposes of audits and investigations under this section, OEM or State auditors, the Governor's Authorized Representative, the Director or their duly authorized representatives, may inspect any books, documents, papers, and records of any person relating to any activity undertaken or funded under the Act.

SUBCHAPTER 3. THE DECLARATION PROCESS

145:10-3-1. Purpose

The purpose of this subchapter is to describe the process leading to a Gubernatorial declaration of major disaster or an emergency and the actions triggered by such a declaration.

145:10-3-2. Definitions

All definitions in 145:10-1-2 apply to this Subchapter. In addition, the following words or terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Appeal" means a request for reconsideration of a determination on any action related to State assistance. Specific procedures for appeals are contained in the relevant subchapters of this chapter.

"Incident" means any condition which meets the definition of major disaster or emergency as set forth in 145:10-1-2 which causes damage or hardship that may result in a Gubernatorial declaration of a major disaster or an emergency.

"Incident period" means the time interval during which the disaster-causing incident occurs. No State assistance under the Act shall be approved unless the damage or hardship to be alleviated resulted from the disaster-causing incident which took place during the incident period or was in anticipation of that incident period. The incident period will be established by OEM.

145:10-3-3. Preliminary damage assessment

The preliminary damage assessment (PDA) process is a mechanism used to determine the impact and magnitude of damage and the resulting unmet needs of the public sector, and the community as a whole. It is in the best interest of all parties to combine State and local personnel resources by performing a joint PDA prior to the initiation of a request, as follows:

- (1) **Preassessment by the State.** When an incident occurs, or is imminent, which the State official responsible for disaster operations determines may be beyond the eligible Applicant(s) capabilities to respond, the State will perform a joint PDA with the eligible Applicant.
- (2) **Damage assessment teams.** Damage assessment teams will be composed of at least one representative of the eligible Applicant and one representative of the State. Other State agencies, may also be asked to participate, as needed. It is the State's responsibility to coordinate the PDA and to ensure that the participants receive timely notification concerning the schedule. An OEM official will brief team members on damage criteria, the kind of information to be collected for the particular incident, and reporting requirements.
- (3) **Review of findings.** At the close of the PDA, OEM will consult with the eligible Applicant to discuss findings and reconcile any differences.
- (4) **Exceptions.** The requirements for a joint PDA may be waived for those incidents of unusual severity and magnitude that do not require field damage assessments to determine the need for supplemental State assistance under the Act, or in such other instances determined by the Director upon consultation with the eligible Applicant. It may be necessary, however, to conduct an assessment to determine unmet needs for managerial response purposes.

145:10-3-4. Requests for emergency declarations

- (a) When an incident occurs or threatens to occur in the State, which would not qualify under the definition of a major disaster, the eligible Applicant's highest elected official, or his/her representative in his/her absence, may request that the Governor declare an emergency. The eligible Applicant's highest elected official

should submit the request to the Governor through the Director to ensure prompt acknowledgment and processing.

- (b) The basis for the eligible Applicant's highest elected officials request must be the finding that the situation:
 - (1) Is of such severity and magnitude that effective response is beyond the capability of the eligible Applicant(s) and
 - (2) Requires supplementary State emergency assistance to save lives and to protect property, public health and safety, or to lessen or avert the threat of a disaster.
- (c) In addition to the findings in (b) of this Section, the complete request shall include:
 - (1) Confirmation that the eligible Applicant has taken appropriate action and directed the execution of the emergency plan;
 - (2) Information describing the efforts and resources which have been or will be used to alleviate the emergency;
 - (3) Information describing other efforts and resources which have been or will be used in responding to this incident.
- (d) The requirement for a request under subsection (a) of this section can be waived when an emergency exists for which the primary responsibility rests in the State government because the emergency involves a subject area for which, under the Constitution or laws of the State of Oklahoma exercises exclusive or preeminent responsibility and authority. Any party may bring the existence of such a situation to the attention of the OEM Director. In determining that such an emergency exists, the Director shall consult the Governor.
- (e) It is not intended for an emergency declaration to preempt other state authorities and/or established plans and response mechanisms in place prior to the enactment of the act.
- (f) The request must be submitted within 30 days after the occurrence of the incident in order to be considered.

145:10-3-5. Requests for major disaster declarations

- (a) When an incident occurs in the State, the eligible Applicant's highest elected official of the affected jurisdiction or his/her representative may request a major disaster declaration. The eligible Applicant's highest elected official should submit the request to the Governor through the Director to ensure prompt acknowledgment and processing.
- (b) This basis for the request shall be a finding that:
 - (1) The situation is of such severity and magnitude that effective response is beyond the capabilities of the eligible Applicant(s); and

- (2) State assistance under the Act is necessary to supplement the efforts and available resources of the eligible Applicant(s), and compensation by insurance for disaster-related losses.
- (c) In addition to the findings in (b) of this Section, the complete request shall include:
- (1) Confirmation that the eligible Applicant's highest elected official has taken appropriate action and directed the execution of the emergency plan;
 - (2) An estimate of the amount and severity of damages and losses stating the impact of the disaster on the public sector;
 - (3) Information describing the nature and amount of resources which have been or will be committed to alleviate the results of the disaster;
 - (4) Preliminary estimates of the types and amount of supplementary State disaster assistance needed under the Act.
- (d) The request must be submitted within 30 days of the occurrence of the incident in order to be considered.

145:10-3-6. Processing requests for declarations of a major disaster or emergency

- (a) **Acknowledgment.** The Director shall provide written acknowledgment of the eligible Applicant's request.
- (b) **OEM recommendation.** Based on all available information, the Director shall formulate a recommendation which shall be forwarded to the Governor or his/her representative with the eligible Applicant's request.
 - (1) **Major disaster recommendation.** The major disaster recommendation will be based on a finding that the situation is or is not of such severity and magnitude as to be beyond the capabilities of the eligible Applicant(s). It will also contain a determination of whether or not supplemental State assistance under the Act is necessary and appropriate. In developing a recommendation, OEM will consider such factors as:
 - (A) the amount and type of damages;
 - (B) the impact of damages;
 - (C) the availability of resources;
 - (D) the extent and type of insurance in effect to cover losses;
 - (E) assistance available from other State programs and other sources;
 - (F) imminent threats to public health and safety;
 - (G) recent disaster history in the State;
 - (H) hazard mitigation measures taken by the State or the eligible Applicant(s), especially implementation of measures

- required as a result of previous major disaster declarations;
and
(l) other factors pertinent to a given incident.

- (2) **Emergency recommendation.** The emergency recommendation will be based on the findings which will indicate whether or not State emergency assistance is necessary to lessen or avert the threat of a major disaster.

145:10-3-7. Gubernatorial determination

- (a) The eligible Applicant's request for a major disaster declaration may result in either a Governor's declaration of a major disaster or denial of the request.
(b) The eligible Applicant's request for an emergency declaration may result in either a Governor's declaration of an emergency or denial of the request.

145:10-3-8. Notification

- (a) The eligible Applicant's highest elected official will be promptly notified by the Director or his/her designee of a declaration by the Governor that an emergency or a major disaster exists. OEM also will notify other state agencies and other interested parties.
(b) The eligible Applicant's highest elected official will be promptly notified by the Director or his/her designee of a determination that the request does not justify the use of the authorities of the Act.
(c) Following a major disaster or emergency declaration, the Director will promptly notify the eligible Applicant's highest elected official of the designations of assistance and areas eligible for such assistance.

145:10-3-9. Designation of affected areas

- (a) **Areas eligible to receive assistance.** The Director has been delegated authority to designate areas eligible for supplementary State assistance under the Act.
(b) **Requests for additional designations after a declaration.** After a declaration by the Governor, requests that additional areas or types of supplementary State assistance may be authorized by the Director. Such requests shall be accompanied by appropriate verified assessments and commitments by eligible Applicant(s) to demonstrate that the requested designations are justified and that the unmet needs are beyond local capabilities without supplementary State assistance.
(c) **Time limits to request.** In order to be considered, all supplemental requests under subsection (b) of this section must be submitted within 30 days from the termination date of the incident period. The 30-day period may be extended by the Director provided that a written request is made by the eligible Applicant's highest elected official during this 30-day period. The request must include justification of the local's inability to meet the deadline.

145:10-3-10. Appointment of disaster officials

- (a) **State Coordinating Officer.** Upon a declaration of a major disaster or of an emergency, the Governor shall designate a State Coordinating Officer (SCO) who shall coordinate all State assistance.
- (b) **Governor's Authorized Representative.** The Governor shall designate the Governor's Authorized Representative (GAR), who shall administer disaster assistance programs on behalf of the Governor. The GAR is responsible for the State and local compliance.

145:10-3-11. Responsibilities of coordinating officers

Following a declaration of a major disaster or an emergency, the SCO shall:

- (1) Make an initial appraisal of the types of assistance most urgently needed;
- (2) Establish field offices as necessary to coordinate and monitor assistance programs and disseminate information.
- (3) Coordinate the administration of relief.
- (4) Undertake appropriate action to make certain that all of the State agencies are carrying out their appropriate disaster assistance roles under their own legislative authorities and operational policies; and
- (5) Take other action, consistent with the provisions of the Act, as necessary to assist citizens and public officials in promptly obtaining assistance to which they are entitled.

145:10-3-12. Emergency support teams

The State Coordinating Officer may activate emergency support teams, composed of State program and support personnel, to be deployed into an area affected by a major disaster or emergency. These emergency support teams assist the SCO in carrying out his/her responsibilities. Any State Agency can be directed to detail personnel within the agency's administrative jurisdiction to temporary duty with SCO approval. Each detail shall be without loss of seniority, pay, or other employee status.

145:10-3-13. Appeals

- (a) **Denial of declaration request.** When a request for a major disaster declaration or for any emergency declaration is denied, the eligible Applicant's highest elected official may appeal the decision. An appeal must be made within 30 days after the date of the letter denying the request. This one-time request for reconsideration, along with appropriate additional information, is submitted to the Governor through the Director.
- (b) **Extension of time to appeal.** The 30-day period referred to in subsection (a) of this section may be extended by the Director provided that a written request for such an extension, citing reasons for the delay, is made during this 30-day period, and if the Director agrees that there is a legitimate basis for extension of the 30-day period. Only the eligible Applicant's highest elected official may request a time extension for appeals covered in subsection (a) of this section.

SUBCHAPTER 5. PUBLIC ASSISTANCE PROJECT ADMINISTRATION

145:10-5-1. General

- (a) **Purpose.** This subchapter establishes procedures for the administration of Public Assistance grants approved under the provisions of the Act.
- (b) **Policy.** It is a requirement of the Act that, in the administration of the Public Assistance Program, eligible assistance be delivered as expeditiously as possible consistent with State laws and regulations.

145:10-5-2. Definitions

The following words or terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Eligible Applicant" means an incorporated city, town or county submitting an application for assistance under the State's grant.

"Emergency work" means that work which must be done immediately to save lives and to protect improved property and public health and safety, or to avert or lessen the threat of a major disaster.

"Facility" means any publicly owned building, works, system, or equipment, built or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.

"Grant" means an award of financial assistance. The grant award shall be based on the total eligible State share of all approved projects.

"Grantee" means the eligible Applicant to which a grant is awarded which is accountable for the use of the funds provided.

"Hazard mitigation" means any cost effective measure which will reduce the potential for damage to a facility from a disaster event.

"Permanent work" means that restorative work that must be performed through repairs or replacement, to restore and eligible facility on the basis of its predisaster design and current applicable standards.

"Predisaster design" means the size or capacity of a facility as originally designed and constructed or subsequently modified by changes or additions to the original design. It does not mean the capacity at which the facility was being used at the time the major disaster occurred if different from the most recent designed capacity.

"Project Worksheet (PW)" means an OEM document capturing all work performed at a single or multiple sites and eligible for assistance under this Act.

"Project Worksheet approval" means the process where the Director signs an approval of work and costs on a PW. Such approval is also an obligation of funds to the Grantee.

145:10-5-3. Application procedures

- (a) **General.** This section describes the policies and procedures for processing grants for State disaster assistance. The State is responsible for processing grants to applicants in accordance with its own policies and procedures.
- (b) **Grantee.** The Grantee serves as the grant administrator for all funds provided under the State Public Assistance grant program. The Grantee's responsibilities as they pertain to procedures outlined in the section include providing support and submission of those documents necessary for grants award.
- (c) **Per Capita Indicator.** The Grantee must provide evidence their level of damage has exceeded their indicator. The Grantee indicator is derived from the calculated result of the current year Federal Emergency Management Agency ("FEMA") County Per Capita Indicator multiplied by the latest census of the Grantee's population.
- (d) **Notice of Intent (NOI).** The Grantee must submit to the Director, within 30 days following designation of the area in which damage is located, a letter on official letterhead and contain the following:
 - (1) Evidence the Grantee indicator has been met or exceeded
 - (2) Identification of damage
 - (3) Recovery cost or estimate
 - (4) Economic impact to the jurisdiction's budget
- (e) **Project Worksheet (PW).** A Project Worksheet will be formulated following policies and procedures established by OEM. A PW will identify the eligible scope of work and a quantitative estimate for the eligible work. All PWs will be written using the current FEMA Public Assistance eligibility criteria.
- (f) **Grant approval.** The Director will provide NOI approval or denial notification to the Grantee within 60 days from the date of the NOI. If approved, all eligible PWs will be written and approved by the Director within 60 days of the date of the Director's approval notification or from the date OEM receives all needed documentation to formulate the PW from the Grantee. The Director shall have the authority to withdraw grant approval if all required documentation is not submitted by the Grantee to OEM within 30 days of the date of the Director's approval notification.
- (g) **Exception.** The time limitations shown in subsections (c) and (d) of this section may be extended by the Director when justified and requested in writing by the Grantee. Such justification shall be based on extenuating circumstances beyond the Grantee's control.

145:10-5-4. State grant assistance

- (a) **General.** This section describes the types and extent of State funding available under State disaster assistance grants, as well as limitations and special procedures applicable to each.
- (b) **Funding.** A Grantee shall only be eligible to receive one Gubernatorial Declaration per calendar year.
- (c) **Annual maximum.** Funding provided to a Grantee through the State Public Assistance Program shall not exceed one hundred thousand dollars (\$100,000.00) in a calendar year.
- (d) **Cost Share.** Funding of the State Public Assistance Program is to be shared by the Grantee and the State. The State shall be responsible for 75 percent of total cost, of which may not exceed one hundred thousand dollars (\$100,000.00). The Grantee shall be responsible for the remaining 25 percent of total cost.
- (e) **Delinquency.** A Grantee delinquent in owing the State funds received through the FEMA Public Assistance Program or previous Gubernatorial declarations may not be eligible to receive Gubernatorial declaration funding until all outstanding payments have been paid to the State.

145:10-5-5. Project worksheet validation

- (a) **General.** This section describes the policies and procedures applicable during the project worksheet validation.
- (b) **Time limitations for completion of work.**
 - (1) **Deadlines.** The PW completion deadlines shown below are set from the date that a major disaster or emergency is declared and apply to all PWs approved under State disaster assistance grants:
 - (A) Debris clearance - 6 months
 - (B) Emergency work - 6 months
 - (C) Permanent work - 18 months
 - (2) **Exceptions.** The State may impose alternate deadlines for the completion of work if considered appropriate.
- (c) **Requests for time extensions.** Requests for time extensions shall be submitted by the Grantee to the SCO and shall include the following:
 - (1) The dates and provisions of all previous time extensions on the PW; and
 - (2) A detailed justification for the delay and a projected completion date. The SCO shall review the request and make a determination. The Grantee shall be notified of the SCO's determination in writing. If the SCO approves the request, the notification shall reflect the approved completion date and any other requirements the SCO may determine necessary to ensure that the new completion date is met. If the SCO denies the time

extension request, the Grantee may, upon completion of the PW, be reimbursed for eligible PW costs incurred only up to the latest approved completion date. If the PW is not completed, no State funding will be provided for that PW.

(d) **Cost Overruns.** During the execution of approved work a Grantee may find that actual PW costs are exceeding the approved PW estimates.

(1) Such cost overruns normally fall into the following three categories:

- (A) Variations in unit prices;
- (B) Change in the scope of eligible work; or
- (C) Delays in timely starts or completion of eligible work.

(2) The Grantee shall evaluate each cost overrun and, when justified, submit a request for additional funding to the SCO for final determination. All requests for the SCO's approval shall contain sufficient documentation to support the eligibility of claimed work and costs. The Grantee shall include a written recommendation when forwarding the request. The Director shall notify the Grantee in writing of the final determination. The Grantee may submit an appeal for additional funding in accordance with 145:10-5-7, within 60 days following the completion of all of its PWs. Funding shall not exceed the annual maximum.

(e) **Progress reports.** Progress reports will be submitted by the Grantee to the SCO quarterly. The first quarterly report shall be due the first quarter subsequent to receiving the award. Such reports will describe the status of those PWs on which a final payment has not been made to the Grantee and outline any issues or circumstances expected to result in noncompliance with the approved grant conditions.

145:10-5-6. Payment of claims

(a) **Payment.** PWs may be paid up to the PW estimate at the Director's discretion.

(b) **Timing.** Payment should be made by the State to the Grantee as soon as practicable after approval of funding. Prior to the validation of the PW, the Grantee shall certify that in the completed PWs are in accordance with OEM approvals. Failure to complete a PW may require that the payment be refunded.

(c) **Account of Work.**

(1) If requested by the SCO, the Grantee shall make an accounting to the SCO of eligible costs for each approved PW. In submitting the accounting the Grantee shall certify that reported costs were incurred in the performance of eligible work, that the approved work was completed and that the PW is in compliance. Each PW shall be submitted as soon as practicable after the Grantee has completed the approved work and requested payment.

- (2) The SCO shall review the accounting to determine the eligible amount of reimbursement for each PW and approve eligible costs. If a discrepancy between reported costs and approved funding exists, the SCO may conduct field reviews to gather additional information. If discrepancies in the claim cannot be resolved through a field review, a State audit may be conducted and funds may be recovered by the State. If the SCO determines that eligible costs exceed the initial approval, he/she will obligate additional funds as necessary up to the annual maximum.

145:10-5-7. Appeals

- (a) **Grantee.** The Grantee may appeal any determination previously made related to State assistance including a time extension determination made by the Grantee. The Grantee's appeal shall be made in writing and submitted to the Director within 60 days after receipt of notice of the action which is being appealed. The appeal shall contain documented justification supporting the Grantee's position.
- (b) **Director.** Upon receipt of an appeal, the Director shall review the material submitted and make such additional investigations as deemed appropriate. Within 90 days following receipt of an appeal, the Director shall notify the Grantee, in writing, as to the disposition of the appeal or of the need for additional information. Within 90 days following the receipt of such additional information, the Director shall notify the Grantee, in writing, of the disposition of the appeal. If the decision is to grant the appeal, the Director will take appropriate implementing action.

145:10-5-8. Audit requirements

All audit requirements for this program are consistent with Federal and State audit requirements for public grants.

SUBCHAPTER 7. PUBLIC ASSISTANCE ELIGIBILITY

145:10-7-1. General

This subchapter provides policies and procedures for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs for assistance under the Act. Assistance under this subchapter must also conform to requirements of Subchapter 5-Public Assistance Project Administration and 9-Public Assistance Insurance Requirements. Regulations concerning Floodplain Management and Environmental Considerations, also apply to this assistance.

145:10-7-2. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Facility" means any publicly owned building, works, system, or equipment, built or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.

"Force account" means an applicant's own labor forces and equipment.

"Immediate threat" means the threat of additional damage or destruction from an event which can reasonably be expected to occur within five years.

"Improved property" means a structure, facility or item of equipment which was built, constructed or manufactured. Land used for agricultural purposes is not improved property.

"Public entity" means an organization formed for a public purpose whose direction and funding are provided by one or more political subdivisions of the State.

"Standards" means codes, specifications or standards required for the construction of facilities.

145:10-7-3. Applicant eligibility

The following entities are eligible to apply for assistance under the State public assistance grant:

- (1) Incorporated cities and towns
- (2) Counties

145:10-7-4. General work eligibility

(a) **General.** To be eligible for financial assistance, an item of work must be:

- (1) Required as the result of the major disaster event,
- (2) Located within a designated disaster area, and
- (3) The legal responsibility of an eligible Applicant.

(b) **Negligence.** No assistance will be provided to an eligible Applicant for damages caused by its own negligence. If negligence by another party results in damages, assistance may be provided, but will be conditioned on agreement by the eligible Applicant to cooperate with OEM in all efforts necessary to recover the cost of such assistance from the negligent party.

145:10-7-5. Debris removal

(a) **Public interest.** Upon determination that debris removal is in the public interest, the SCO may provide assistance for the removal of debris and wreckage from publicly and privately owned lands and waters. Such removal is in the public interest when it is necessary to:

- (1) Eliminate immediate threats to life, public health, and safety; or
- (2) Eliminate immediate threats of significant damage to improved public or private property; or
- (3) Ensure economic recovery of the affected community to the benefit of the community-at-large.

(b) **Debris removal from private property.** When it is in the public interest for an eligible Applicant to remove debris from private property in urban, suburban and

rural areas, including large lots, clearance of the living, recreational and working area is eligible except those areas used for crops and livestock or unused areas. The Grantee will ensure that the rights of the property owner are met through documentation and notification.

- (c) **Assistance to individuals and private organizations.** No assistance will be provided directly to an individual or private organizations, or to an eligible Applicant for reimbursement of an individual or private organization, for the cost of removing debris from their own property.

145:10-7-6. Emergency work

- (a) Emergency protective measures to save lives, to protect public health and safety, and to protect improved property are eligible.
- (b) In determining whether emergency work is required, the SCO may require certification by local officials that a threat exists, including identification and evaluation of the threat and recommendations of the emergency work necessary to cope with the threat.
- (c) In order to be eligible, emergency protective measures must:
- (1) Eliminate or lessen immediate threats to life, public health or safety; or
 - (2) Eliminate or lessen immediate threats of significant additional damage to improved public or private property through measures which are cost effective.

145:10-7-7. Restoration of damaged facilities

Work to restore eligible facilities on the basis of the design and function of such facilities as they existed immediately prior to the disaster and in conformity with the following is eligible:

- (1) **Assistance under other State or Federal agency programs.** Generally, disaster assistance will not be made available under the Act when another State or Federal agency has specific authority to restore facilities damaged or destroyed by an event which is declared a major disaster.
- (2) **Standards.** For the costs of repair or replacement standards which change the predisaster design and construction of facility to be eligible, the standards must meet Federal and State guidelines.
- (3) **Hazard mitigation.** In approving grant assistance for restoration of facilities, the SCO may require cost effective hazard mitigation measures not required by applicable standards. The cost of any requirements for hazard mitigation placed on restoration projects by OEM will be an eligible cost for State assistance, not to exceed the cumulative annual maximum allowed.
- (4) **Repair vs. replacement.**

(A) A facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing a facility to its predisaster condition, and it is feasible to repair the facility so that it can perform the function for which it was being used as well as it did immediately prior to the disaster.

(B) If a damaged facility is not repairable in accordance with paragraph (d)(1) of this section, approved restorative work may include replacement of the facility. The eligible Applicant may elect to perform repairs to the facility, in lieu of replacement, if such work is in conformity with applicable standards. However, eligible costs shall be limited to the less expensive of repairs or replacement.

(C) An exception to the limitation in paragraph (d)(2) of this section may be allowed for facilities eligible for or on the National Register of Historic Properties. If an applicable standard requires repair in a certain manner, costs associated with that standard will be eligible.

(5) Relocation.

(A) The SCO may approve funding for and require restoration of a destroyed facility at a new location when:

- (i) The facility is and will be subject to repetitive heavy damage;
- (ii) The approval is not barred by other provisions.
- (iii) The overall project worksheet (PW), including all costs, is cost effective.

(B) When relocation is required by the SCO, eligible work includes land acquisition and ancillary facilities such as roads and utilities, in addition to work normally eligible as part of a facility reconstruction. Demolition and removal of the old facility is also an eligible cost.

(C) When relocation is required by the SCO, no future funding for repair or replacement of a facility at the original site will be approved.

(D) When relocation is required by the SCO, and, instead of relocation, the eligible Applicant's requests approval of an "alternate project", eligible costs will be limited to 90 percent of the estimate of restoration at the original location excluding hazard mitigation measures.

(E) If relocation of a facility is not feasible or cost effective, the SCO shall disapprove funding for the original location when he/she determines that restoration in the original location is not allowed. In such cases, an alternate project may be applied for.

(6) Equipment and furnishings. If equipment and furnishings are damaged beyond repair, comparable items are eligible as replacement items.

(7) **Library books and publications.** Replacement of library books and publications is based on an inventory of the quantities of various categories of books or publications damaged or destroyed. Cataloging and other work incidental to replacement are eligible.

(8) **Beaches.**

(A) Replacement of sand on an unimproved natural beach is not eligible.

(B) Work on an improved beach may be eligible under the following conditions:

- (i) The beach was constructed by the placement of sand (of proper grain size) to a designed elevation, width, and slope; and
- (ii) A maintenance program involving periodic renourishment of sand must have been established and adhered to by the applicant.

(9) **Restrictions.**

(A) **Alternative use facilities.** If a facility was being used for purposes other than those for which it was designed, restoration will only be eligible to the extent necessary to restore the immediate predisaster alternate purpose.

(B) **Inactive facilities.** Facilities that were not in active use at the time of the disaster are not eligible except in those instances where the facilities were only temporarily inoperative for repairs or remodeling.

145:10-7-8. Snow removal assistance

Snow removal assistance under this Act will be consistent with current Federal guidelines and policy.

145:10-7-9. Allowable costs

Policy for determining allowable costs of eligible Applicant-owned equipment used to perform eligible work will be in accordance with current FEMA Cost Codes for the State.

SUBCHAPTER 9. PUBLIC ASSISTANCE INSURANCE REQUIREMENTS

145:10-9-1. General

Public Assistance Insurance requirements are consistent with current FEMA guidelines and policies.